

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Statement of Issues Against:

JEFF WILLIAM CHAFF

Applicant for Registered Nurse License

Respondent.

Case No. 2012-458

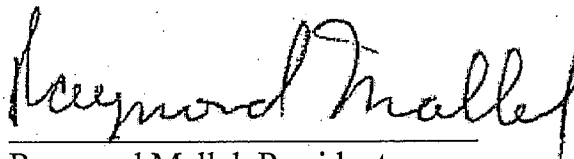
OAH No. 2012070091

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on May 3, 2013.

IT IS SO ORDERED this 3rd day of April, 2013.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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JEFF WILLIAM CHAFF,

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PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 13, 2012.

Leslie E. Brast, Deputy Attorney General, represented complainant Louise R. Bailey, M.Ed., R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs.

Adam Slote, Esq., Slote & Links, represented respondent Jeff William Chaff, who was present.

The matter was submitted on December 13, 2012.

FACTUAL FINDINGS

1. Complainant Louise R. Bailey, M.Ed., R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, issued the First Amended Statement of Issues in her official capacity.
2. Respondent filed a June 2, 2011, application for licensure with the board. His application was denied.
3. On July 8, 2003, in the Superior Court of California, County of Santa Clara, respondent was convicted, on his plea of no contest, of violations of Penal Code sections 484/487, subdivision (b)(3) (grand theft by employee), and 459/460, subdivision (b) (second degree burglary – entering with intent to commit theft). Both convictions were felonies. Respondent was placed on probation for three years and ordered to attend a theft awareness

program, serve work furlough for six months, and pay \$650.50 in fines and \$28,425.00 in restitution.

4. Respondent's convictions involved ongoing thefts of merchandise (including clothing, handbags, and jewelry) in 2002 and 2003 while he was a sales employee at Neiman Marcus. Respondent felt that Neiman Marcus treated him unfairly; for example, he won a company drawing for a vacation trip, but the store refused to let him claim the prize. Respondent took items from the store to get back at his employer. He involved a friend in his scheme. In a letter to the board, respondent wrote:

I stole merchandise from a previous employer, Neiman Marcus. The reason why I did it was because I was discontent. When my sales were beginning to decrease, I did not manage my response correctly. The company warned me of my current status and explained that further action would be taken. I mistakenly took that as an attack and, instead of seeking help to deal with the problem, I became arrogant. I felt entitlement because I was a good employee for three years, and they were going to discipline me with the possibility of being fired. So I took an item without paying for it. The item was a wallet, and eventually became more and larger items. Although my sales were decreasing I personally was not in financial crisis. As time passed I was taking merchandise on a frequent basis. By the time I got caught I was taking bags full of unpaid merchandise and passing it off to my friend.

5. On February 28, 2003, the Neiman Marcus Loss Prevention Team stopped respondent and told him they knew about the thefts. Respondent knew what he had done was wrong and apologized. He cooperated with the Neiman Marcus personnel and with the Palo Alto Police Department. This included returning to his home to retrieve the merchandise he had taken. The police report noted that respondent was "extremely cooperative and honest about the thefts."

6. Respondent complied with the terms of his probation. He entered work furlough in July 2004 and was granted early release for good behavior in November 2004. He attended a theft awareness program in July 2005. He made regularly scheduled restitution payments. He paid all fines and restitution before his probation terminated.

7. On November 21, 2007, respondent's convictions were dismissed pursuant to Penal Code section 1203.4. On December 15, 2011, respondent's convictions were reduced from felonies to misdemeanors pursuant to Penal Code section 17.

8. After his arrest, respondent regained employment within two months in order to pay the restitution he owed. He was employed as a sales associate at J. Crew and was

promoted to stock supervisor and manager trainee. After two years he was recruited to work for Pottery Barn as a department coordinator for its design studio.

9. After taking courses and tests to clarify his interests and values, respondent decided to leave the retail industry in order to pursue a career in nursing. He took prerequisite courses at Skyline Community College. In 2009 he entered the College of San Mateo to begin nursing school. While in nursing school, respondent served as the vice president of the Nursing Student Association. He completed the program in 2011 and was at the top of his class.

10. Jane McAteer, R.N., M.N., Director of Nursing, College of San Mateo, wrote a May 29, 2012, letter of support for respondent. She was aware of respondent's convictions and noted:

During the time I have known Jeff, I have always felt that his behavior indicated a commitment to honesty and integrity. These characteristics were never in question throughout his classroom, clinical and laboratory courses throughout the curriculum.

11. Tracy D. Pennington, M.S., R.N., Associate Professor of Nursing, College of San Mateo, wrote a May 21, 2012, letter of support for respondent. Respondent was a member of Pennington's clinical group during a six-month period. She wrote:

I have read the Statement of Issues and have been informed regarding the nature of Jeff's case. Through my clinical observation of Jeff's conduct and actions, I feel comfortable supporting his application to take the licensing examination. While I am saddened that this incidence occurred, I believe Jeff is a better person today because of the lessons he has learned. I feel that he has demonstrated true remorse for his actions as indicated by his diligence in making restitution for his actions, and the lack of further incidences. My observations concluded that his knowledge, clinical skills and work ethic are consistent with the qualifications I desire for an RN I would want to take care of myself or my family members. In addition, he demonstrated personal characteristic [*sic*] of honesty and integrity such that I would have no reservations recommending him to a clinical manager for employment as an RN applicant.

12. While in nursing school, respondent was employed as a reprocess technician at Atherton Endoscopy Center, an outpatient endoscopy facility. He continued to be employed there at the time of the hearing.

13. Molly Tinney, R.N., Clinical Director, Atherton Endoscopy Center, was a witness for respondent. She also wrote a June 6, 2011, letter in support of respondent:

It is with great pleasure that I write this letter of recommendation for Jeff Chaff. Jeff was hired in October 2008 as a reprocessing technician for our privately owned Endoscopy Center in Atherton California. Jeff quickly excelled in his position; easily learning new tasks. He is an incredibly dedicated and responsible employee.

Jeff initially worked full time and has continued on in a per diem position while working on his nursing degree. We have a great deal of respect for our reprocessing techs here at the Endoscopy Center, and consider this one of our most important positions. The tech is not only ensuring our scopes are disinfected to all the current standards and meticulously maintained but we also depend on them to maintain our daily follow and keep the room turnaround times efficient. I have complete trust in Jeff and his abilities.

Jeff has demonstrated that he has an extremely professional, respectful and positive attitude. He is always helpful, offering his assistance to his co-workers when he has downtime. Jeff gets along well with everyone he interacts with, from patients to physicians.

There is no reservation in my mind that Jeff will make an excellent nurse and clinician. I'm confident that he will excel at whatever he does. Please feel free to contact me with any questions.

14. Respondent disclosed his criminal convictions to Tinney in the fall of 2011. She was surprised and felt that respondent's offenses were out of character. Respondent was embarrassed and remorseful. Despite respondent's convictions, Tinney noted they had already been expunged and fully supported the grant of a license to respondent.

15. Karyn Scaduto, R.N., Atherton Endoscopy Center, was a witness at the hearing. She has known respondent since he started working at the Atherton Endoscopy Center in 2008. She noted that respondent is a very caring and compassionate individual who engages well with the center's patients. She described respondent as a quick learner who would be a good nurse. She is aware of respondent's criminal convictions and observed that respondent is very remorseful about them. Scaduto strongly supports respondent's application to become a registered nurse. In a May 28, 2012, letter, Scaduto wrote that respondent has an "impressive work ethic" and that his role at the center evolved over the years to now include patient care. Scaduto further wrote:

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When Jeff approached me recently and shared his situation, I could see that he was visibly embarrassed but more than that, he was remorseful. I read the Statement of Issues completely and was of course, very surprised. This is just not the Jeff Chaff that I have come to know. I am quite confident that the Jeff I know today is quite different from the one described in the case before you. It make me sad to think that this man would be denied a Nursing license, knowing him as I do now. I hope that you will please consider my recommendation as you make your decision.

16. Respondent has volunteered at Mission Hospice & Home Care, San Mateo, since 2011. Volunteer Coordinator Hank Nourse wrote a June 5, 2012, letter of support for respondent:

Jeff Chaff applied to our organization and went through our Direct Care Volunteer Training in the Fall of 2011. After completing training he has visited several of our patients providing them with companionship and practical help as needed as a volunteer. He has lived up to our standards of being punctual, compassionate and caring in serving each patient assigned to him including submitting written reports on each visit. He has participated in our group volunteer meetings and case conferences. Jeff has demonstrated the utmost character and integrity in all of his work in our organization. Jeff has explained his past criminal behavior to us and the restitution that he served for it to our satisfaction. He continues volunteering with us. We have no hesitation in recommending him to the Board of Register [sic] Nursing.

17. Respondent was raised in the Catholic Church. He was depressed and guilty after his conviction. At his mother's suggestion he went back to church. He regularly attends Mass at Saint Catherine of Siena Church, Burlingame, and receives pastoral counseling. Father John Ryan wrote a May 21, 2012, letter in support of respondent:

Jeff is deeply aware of the gravity of his crime. He has deep remorse for the wrongs he did. Criminal behavior is never good. However, when one is honest about the evil done and comes to what we know in religious language as repentance and conversion, then one can become a really good law-abiding person. I believe Jeff is totally committed to living a life of service and desires to do so as a Nurse.

18. Respondent served in the United States Marine Corps Reserve since 1998. He was honorably discharged in February 2006.

19. Respondent was age 26 at the time of his offense. He is now 36 years old and at hearing evinced a maturity and insight he lacked a decade ago. His attitude has changed. In a letter to the board, respondent wrote:

This incident changed my way of thinking. We are all taught about consequences, but I got to experience it first hand. I know what it is like to make a mistake and all the hard work that is needed to overcome it. This event in my life has taught me to be more empathetic. I try my best not to judge people too quickly. This has made me become a better student and a better nurse. When caring for a patient I do my best to build a rapport with them. Then I can interview them to find out what is ailing them and help them improve. I reinforce the plan of care for the patient to attain a positive outcome.

I am writing this explanation statement to affirm my commitment to nursing and patient care. I want to testify that people can change and use a negative experience and grow from it. I promise to follow the established laws set by the Board of Registered Nursing and continue making patient safety my highest priority. Hopefully you will allow me to continue on my career path. Thank you.

20. Respondent has no other criminal offenses before or after the offense at Neiman Marcus. He has been responsibly employed and led a law-abiding life. He has been a successful nursing student, with strong letters of recommendation from nurses who served as his faculty members, supervisors and co-workers. He has been involved in community service as a hospice volunteer.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides that the board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, or has committed any act which if done by a licensee would be grounds for suspension or revocation of a license. Section 2761, subdivisions (a) and (f), provides that the board may deny an application for unprofessional conduct, including conviction of a felony or any offense substantially related to the qualifications, functions or duties of a registered nurse. Respondent's criminal convictions subject his application for a registered nurse license to denial under these provisions.

2. In keeping with its paramount obligation to protect consumers of nursing services from unsafe, incompetent, or negligent registered nurses, the board has adopted

recommended guidelines for disciplinary orders and conditions of probation. In determining whether and what discipline to impose, the guidelines provide that several factors should be considered. Those factors are listed below, with a discussion of their applicability to the circumstances of this case:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.

Respondent engaged in ongoing thefts of merchandise over several months in 2002 and 2003 while employed at Neiman Marcus. Although respondent posed no physical threat to others, he engaged in a serious offense.

2. Actual or potential harm to the public.

Respondent's took merchandise worth over \$28,000 from his employer. He made full restitution.

3. Actual or potential harm to any patient.

Respondent committed his offense when he worked in the retail industry. No patients were harmed. There is no evidence that he has or might harm patients; to the contrary, his nursing faculty and supervisor commented favorably on his care for patients.

4. Prior disciplinary record.

Respondent has no prior (or subsequent) disciplinary record.

5. Number and/or variety of current violations.

Respondent has no other violations.

6. Mitigation evidence.

Respondent committed his offense because he felt his employer treated him unfairly. This is not a mitigating circumstance.

7. Rehabilitation evidence.

Respondent immediately accepted responsibility for his offense. He cooperated with Neiman Marcus personnel

and the Palo Alto Police Department. He made full restitution and complied with all terms of his probation. He evinced a maturity he lacked a decade ago. He is sincerely remorseful about his offense and demonstrated a positive change of attitude. He had no other criminal offenses before or after the offense at Neiman Marcus. He has been responsibly employed and led a law-abiding life. He was a successful nursing student, with strong letters of recommendation from nurses who served as his faculty members, supervisors and co-workers. He has been involved in community service as a hospice volunteer. He regularly attends church and receives pastoral counseling.

8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.

Respondent complied with all terms of his probation. He received early release from work furlough for good behavior.

9. Overall criminal record.

Respondent has no other criminal convictions.

10. Time passed since the act(s) or offense(s) occurred.

Ten years have passed since respondent's offense with no recurrence and no indication that he is likely to re-offend.

11. If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.

In 2007, the court dismissed respondent's convictions pursuant to section 1203.4.

In other cases, an applicant's felony theft convictions might result in the denial of the application or the grant of a license with a stayed revocation under probationary terms. The disciplinary guidelines recognize, however, that each case is to be weighed on its own merits:

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that

the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

Respondent committed a serious offense while employed at Neiman Marcus. He has in the intervening decade, however, made an unusually concerted and successful effort to rehabilitate himself. There is no evidence that he will re-offend or endanger the safety of the public or patients. To the contrary, the evidence indicates that he will be a dedicated and successful member of the nursing profession. He should be granted a registered nurse license.

ORDER

The application of Jeff William Chaff for a registered nurse license is granted.

DATED: January 31, 2013

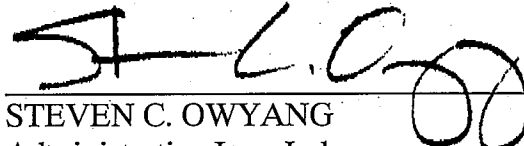

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

First Amended Statement of Issues Case No. 2012-458

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**
10

11 In the Matter of the First Amended Statement of
Issues Against:

12 **Jeff William Chaff**
13

14 Applicant/Respondent.
15

Case No. 2012-458

FIRST AMENDED
STATEMENT OF ISSUES

16 Complainant alleges:

17 PARTIES

18 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Statement of Issues solely in
her official capacity as the Executive Officer of the Board of Registered Nursing (Board),
19 Department of Consumer Affairs.
20

21 2. On or about June 16, 2011, the Board received an application for a Registered Nurse
License from Jeff William Chaff (Respondent). On or about June 2, 2011, Respondent certified
22 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
23 application. The Board denied the application on August 23, 2011.
24

25 JURISDICTION

26 3. This Statement of Issues is brought before the Board under the authority of the
following laws. All section references are to the Business and Professions Code (Code) unless
27 otherwise indicated.
28

4. Code section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.

5. Code section 480 provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licensee would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

6. Code section 2761 states:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • •

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.”

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Conviction)

7. Respondent is subject to disciplinary action under Code sections 2761(a), 2761(f), and/or 480 in that on or about July 8, 2003, in Santa Clara County Superior Court, Case Number BB300701, Respondent was convicted of having violated Penal Code sections 484/487(b)(3) (grand theft by employee) and 459/460(b) (second degree burglary—entering with intent to commit theft), both felonies. The circumstances of the convictions are that, between approximately October 1, 2002 and February 26, 2003, while employed at Neiman Marcus, Respondent stole merchandise in the amount of \$28,425.00. He was sentenced to serve work furlough for 6 months and probation for three years, and ordered to pay \$650.50 in fines and \$28,425.00 in restitution. On or about November 21, 2007, Respondent's convictions were

1 dismissed pursuant to Penal Code section 1203.4; on or about December 15, 2011, Respondent's
2 convictions were reduced from felonies to misdemeanors pursuant to Penal Code section 17.

3 SECOND CAUSE FOR DENIAL OF APPLICATION

4 (Dishonesty)

5 8. Respondent is subject to disciplinary action under Code sections 2761(a) and/or 480
6 in that he committed an act or acts of dishonesty, fraud or deceit, and/or committed an act or acts
7 which, if done by a licentiate, would be grounds for license suspension or revocation. The
8 circumstances are described in paragraph 7, above.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

- 12 1. Denying the application of Jeff William Chaff for a Registered Nursing license;
13 2. Taking such other and further action as deemed necessary and proper.

14 DATED: September 26, 2012

15 *for* LOUISE R. BAILEY, M.ED., RN
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant

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